**THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY**

**WRIT PETITION No.13225 of 1995**

**Dated: 12.12.2006**

Between:

K.Saidulu

… Petitioner

AND

The Gandhi Coop.Urban Bank Ltd.,
Vijayawada.
And two others.

… Respondents

**THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY**

**WRIT PETITION No.13225 of 1995**

**ORDER:-**

This writ petition is filed for a writ of mandamus to set aside the order of third respondent passed in S.A.No.15/94 (C/8651/93) dated 16.3.1995 whereby he allowed the appeal filed by the first respondent Bank.

The petitioner joined the service of the first respondent Bank on 5.9.1959 and while he was working as Attender an incident had taken place in the year 1995 wherein several gold ornaments which were kept in the chest of the Bank were found missing. The petitioner was one among the employees of the Bank who were suspected to have been involved in the said incident. The petitioner was in the first place kept under suspension and later disciplinary proceedings were initiated against him. A charge memo was served on the petitioner on 7.7.1997. Simultaneously on a complaint, police registered a case which was taken on file by the VI Additional Judicial Magistrate of First Class, Vijayawada as C.C.No.48 of 1986. In the meantime, on the basis of the enquiry report in the disciplinary proceedings, the petitioner was dismissed from service on 18.11.1987. The said order was challenged by the petitioner under Section 41 of the Andhra

Pradesh Shops and Establishment Act 1988 before the authority under the said Act. The said authority allowed the appeal filed by the petitioner by its order dated 18.4.1989. Questioning the said order the petitioner filed second appeal registered as S.A.No.15/94(C/8651/93) before the second appellate authority under the A.P.Shops and Establishment Act 1988. While the said appeal was pending the learned VI Additional Metropolitan Magistrate, Vijayawada disposed of the criminal case on 26.8.1993 by convicting the petitioner for the offence under Section 411 of the Indian Penal Code and sentenced the petitioner to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/-. The second appellate authority after hearing the parties disposed of the second appeal by its order dated 16.3.1995, by allowing the said appeal and holding that the termination of the service of the petitioner is legal, proper and justified. Thus the second appellate authority had set aside the orders of the first appellate authority and restored the order passed by the disciplinary authority dismissing the petitioner from service. It is this order, which is under challenge in the present writ petition.

Heard Sri D.Govardhana Chary, learned counsel for the petitioner and Sri M.Ravindarnath Reddy, learned counsel for the first respondent.

Sri Govardhana Chary submitted that the Deputy Commissioner of Labour has committed a serious error in interfering with the well considered findings of the first appellate authority. He further submitted that the 3rd respondent merely relied upon the order dated 26.8.1993 of the criminal court which was subject mater of appeal and therefore his order, which is impugned in the writ petition, deserves to be interfered with.

Per contra, Sri M.Ravindernath Reddy, the learned counsel

appearing for the first respondent submitted that the third respondent after in depth consideration of the entire material, including the evidence, has given cogent reasons for reversing the order of the first appellate authority and therefore, the said order does not call for any interference. He also submitted that during the pendency of the present writ petition the Metropolitan Sessions Judge, Vijayawada disposed of Criminal Appeal No.87 of 1993 filed by the petitioner against the judgment in C.C.No.48 of 1986 of VI Additional Metropolitan Magistrate, Vijayawada wherein the petitioner's conviction was upheld, but however the sentence of three years rigorous imprisonment imposed by the learned Magistrate was converted into one of fine which was enhanced to Rs.2,000/-. The learned counsel therefore contends that as the criminal cases eventually ended in conviction of the petitioner, which conviction has become final, there is no scope for interference with the order passed by the second appellate authority in the disciplinary proceedings in this writ petition.

Having considered the rival contentions, I am of the view that there is no merit in this writ petition. The petitioner's contention that the 3rd respondent merely relied upon the order of the conviction passed by the learned Magistrate in C.C.No.48 of 1986 is not correct. The third respondent has gone through the voluminous material on record and gave several reasons for reversing the order of the first appellate authority. In its order the second appellate authority has observed that when a Sub-Committee which was the enquiring authority, questioned the delinquent whether he would like to say anything about the theft of gold ornaments from the Bank in view of the fact that the police seized a portion of ornaments removed from the Bank, the petitioner did not either say anything or denied the seizure of

gold ornaments from him. The third respondent, on the basis of analysis of evidence, observed that the evidence on record clearly established the involvement of the petitioner in the theft. A perusal of the orders of the Criminal Courts which discussed the entire evidence threadbare leaves one in no doubt that the petitioner was involved in the theft of valuable jewellery kept in the bank. With the judgment of the appellate Court in the criminal appeal having become final the findings of the third respondent get fortified.

It is well settled proposition of law that the degree of proof in criminal proceedings is much more stringent requiring the prosecution to prove the guilt of an accused beyond all reasonable doubt while in disciplinary proceedings availability of some legal evidence is enough for holding an employee guilty of misconduct. It is also well settled that even on preponderance of probabilities the employee can be held guilty of misconduct in disciplinary proceedings. It is not in dispute that the subject matter of the criminal case and the departmental proceedings is common, viz., theft of gold ornaments. In view of the fact that the petitioner is convicted by the criminal court and his appeal having been dismissed by the appellate Court while confirming the conviction but modifying the sentence, it is no longer open to the petitioner to plead that he is innocent of the alleged incident and that he is not guilty of misconduct.

For the aforementioned reasons, I do not see any error in the order passed by the third respondent in reversing the order of the first appellate authority. The writ petition is therefore dismissed.

_____

**C.V.NAGARJUNA REDDY,J**

Date: 12.12.2006
mdaa